

## **Chapter 52 - Solicitation Provisions and Contract Clauses**

### **Section 52.1 Use of Electronic Signatures Between EPA and Contractors**

#### **52.1.1 PURPOSE**

The purpose of this section is to establish the Office of Acquisition Management's initial policy for using and accepting electronic signatures for specified acquisition and contract administration transactions. The electronic signatures must be transmitted by means of an approved application as designated in this policy.

#### **52.1.2 BACKGROUND**

The EPA, like the rest of the Federal Government, is rapidly developing electronic systems for business transactions with the public, commercial entities, regulated parties, and Government contractors. With the 1998 enactment of the Government Paperwork Elimination Act (GPEA), Congress established a deadline of October 2003 for executive agencies to implement "... the use and acceptance of electronic signatures, when practicable." In addition, on June 30, 2000, Congress passed the Electronic Signatures in Global and National Commerce Act (E-SIGN) which validates the use and enforceability of electronic signatures, including those related to contractual transactions.

Until such time as an Agency-wide electronic signature standard is established, OAM is issuing this initial section to permit contracting officials to use and accept specific electronically signed documents under the conditions described in this section.

This section was originally issued as a Procurement Policy Notice (PPN) 00-02 on September 29, 2000. by Judy S. Davis, Acting Director of the Office of Acquisition Management to Senior Resource Officials, OAM Division Directors, Regional Contracting Officer Supervisors, and Bruce Binder, OGC

#### **52.1.3 AUTHORITY/APPLICABILITY**

The authority for this section is based on the Government Paperwork Elimination Act (GPEA) and the Electronic Signatures in Global and National Commerce Act (E-SIGN).

#### **52.1.4 DEFINITIONS**

As used in this document, an "Electronic Signature " means an electronic sound, symbol, or process attached to or logically associated with an electronic acquisition or contract record and executed or adopted by an authorized person with the intent to sign the acquisition or contract record.

### 52.1.5 POLICY

EPA contracting officials may use or accept electronic signatures **only** for acquisition and contract documents specifically identified in this policy. The use of electronic signatures is optional. The written consent of both the Government and the contractor is required before electronic signatures may be used and accepted. In the future, this section will be amended to authorize new processes and uses for electronic signatures.

A) EPA contracting officials may transmit and accept electronic documents that include an electronic signature if the document was sent or received via one of the following systems or programs:

- The EPA Program Office Interface (POI) and the Agency's External Lotus Notes Gateway - the Agency's external Lotus Notes Gateway is one of several portals through which the Agency communicates electronically with external entities; or
- The EPA's Small Purchase Electronic Data Interchange (SPEDI) and the Federal Acquisition Computer Network (FACNET).

EPA contracting officials are not authorized to use Lotus Notes E-mail, with or without that application's signature feature, to create a "signed" acquisition or contract document because Email does not, in general, contain adequate security features to sufficiently protect the Agency's interests. If an EPA contracting official receives a signed acquisition or contract-related document via Internet E-mail, the document may not be accepted as authentic. The sender must be instructed to re-submit the document using an approved electronic method, or by submitting a signed paper original.

B) Electronic signatures may be used only for the following transactions:

- Non-competitive subcontract approvals
- Work Assignments (WAs - issuance of Work Assignments)
- WA Amendments
- Technical Direction Documents (TDDs)
- POI Suspense Slip (tracking slip similar to EPA Form 5180-1)
- Subcontract consents

- Service Contract Act (SCA) wage determinations
- Conflict of Interest (COI) certifications
- Payment suspensions
- Purchase Orders

Each of these transactions (except Purchase Orders) must contain the phrase, "Electronically signed by [insert name of signer]."

ICMS does not currently have any electronic signature capabilities. When ICMS is modified to perform electronic signature functions and/or the interface between POI and ICMS is completed and implemented, this policy will be updated to include other actions that can be used with electronic signatures. This interface will enable exchange of all appropriate contractual data. Until this policy is updated, electronic signatures **shall not** be used or accepted for any other transactions. For example, electronic signatures may not be used for contract awards (other than for Purchase Orders); contract modifications (whether supplemental or unilateral); show cause and termination notices; Delivery Orders or Task Orders; stop work orders, etc.

#### 52.1.5.1 Process

Acceptance of electronic signatures is authorized only if EPA and the Contractor agree, in a signed paper writing, to treat subsequent electronically signed writings as if they were signed paper originals. The parties may agree to provide certain documents as paper originals only or to furnish duplicate paper originals with hand written signatures. For electronic contractual transactions using POI, contractors must obtain authorization from EPA to access EPA's external Lotus Notes gateway server. All requests for authorization shall be submitted through the Contract Officer's (CO's) supervisor to the OAM Information Technology Service Center Manager. All electronically signed documents must be reproducible in a human-intelligible form and clearly indicate: (1) that the document was electronically signed; (2) who signed the document; (3) the title of the electronic signer; and (4) the date and time it was signed.

Contracting officers who wish to use electronic signatures in the administration of contracts above the simplified acquisition threshold must include a clause substantially the same as the following clause in solicitations and contracts. Bidders and offerors should be instructed to state in their bids or proposals whether they wish to have the clause included in the awarded contract. Current contracts may be modified to add the clause.

## APPENDIX 52.1A ELECTRONIC SIGNATURES (EPS 00-O1)

As authorized by the current EPA Procurement Policy Notice on Electronic Signatures (see LTRL<<http://www.epa.gov/oam/ptod/>> for latest version) and indicated in this section, the Government and Contractor agree to accept each other's electronic signature on documents transmitted electronically under this contract. All electronically signed documents must be reproducible in a human-intelligible form and clearly indicate: (1) that the document was electronically signed; (2) who signed the document; (3) the title of the electronic signer; and (4) the date and time it was signed. The parties shall not deny the legal effect, validity, or enforceability of the records containing electronic signatures they transmit and receive on the ground that such records, including the signature(s), are in electronic form.

The receipt date and time of any record shall be the date and time the record is received at the EPA external Lotus Notes Gateway. In the event either party experiences a major system failure which renders the ability to transmit electronic signatures inoperable for more than one business day, the party experiencing the system failure must promptly notify the other party by telephone or by facsimile. While the system is inoperable, the parties may exchange records by facsimile transmissions, with signed originals and copies sent by surface mail or delivered by hand.

The following types of documents shall be issued as signed, paper originals only. *[List types of documents, or insert "None. "]*

At the request of either party, the other party shall provide a duplicate paper original, with a handwritten signature, of the following types of documents. *[List types of documents, or insert "None. "]*

Each party agrees that it will promptly notify the other party of any unauthorized access to, or loss or destruction of electronic records sent or received. Depending on the seriousness of the lapse in computer system security, the contracting officer may modify or suspend the contractor's authorization to use electronic signatures.